

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHARLOTTE BENNETT, : Case No.: 22-cv-7846
Plaintiff, :
v. :
ANDREW M. CUOMO, et al., : New York, New York
Defendants. : January 4, 2024
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TRANSCRIPT OF STATUS CONFERENCE HEARING
BEFORE THE HONORABLE SARAH L. CAVE
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 THE COURT: Good afternoon. This is
2 Magistrate Judge Cave. We're here for a discovery
3 conference in Bennett versus Cuomo; Case Number:
4 22-cv-7846.

5 May I have the appearances, starting with
6 the plaintiff, please.

7 Do we have plaintiff's counsel on the line?
8 Please state your appearance.

9 MS. SCHNELL: Sorry, Your Honor. Laura
10 Schnell for plaintiff, Charlotte Bennett.

11 THE COURT: Okay. Good afternoon.

12 Counsel for Mr. Cuomo?

13 MS. TRZASKOMA: Good afternoon, Your Honor.
14 Theresa Trzaskoma from Sher Tremonte on behalf of
15 Former Governor Cuomo. I'm in my office, joined by
16 my colleague, Allegra Noonan and my co-counsel, Rita
17 Glavin of Glavin PLLC is also here.

18 THE COURT: Thank you.

19 For Ms. DeRosa? Counsel for Ms. DeRosa?

20 Do we have counsel for Ms. DeRosa on the
21 line? If so, please state your appearance.

22 MR. MORVILLO: Good afternoon, Your Honor.
23 This is Gregory Morvillo. I'm sorry, I was on mute.
24 Sarah Sulkowski and Anthony Gruppuso are also on the
25 call. Ms. Sulkowski will be taking the lead for Ms.

1 DeRosa today.

2 THE COURT: Okay. Thank you.

3 Ms. DesRosiers?

4 MR. SCHWAB: Hello. You've got Soren
5 Schwab of Debevoise & Plimpton, on behalf of
6 defendant, Jill DesRosiers. And I'm joined on the
7 line by my colleague, Leah Rosenberg.

8 THE COURT: I'm sorry, who was the other
9 person?

10 MR. SCHWAB: Leah Rosenberg.

11 THE COURT: Okay. Thank you.

12 For Ms. Mogul? Counsel for Ms. Mogul?

13 MS. MESSINA: This is Brianna Messina from
14 Orrick Herrington & Sutcliffe. And I believe Mike
15 Delikat will be joining as well.

16 THE COURT: Okay. Thank you.

17 Counsel for Ms. Boylan?

18 MS. PERRY: Good afternoon, Your Honor.
19 This is Danya Perry. I am joined by my colleague,
20 Krista Oehlke and by my co-counsel, Julie Gerchik.

21 THE COURT: Okay. Good afternoon.

22 And for the Attorney General's Office?

23 MS. LONGLEY: Hi. Good afternoon,
24 Your Honor. This is Serena Longley from the
25 Attorney General's Office. I'm also joined by my

1 colleagues on the phone, Michael Jaffe and James
2 Cooney. We may have another colleague join, but
3 he's currently not on.

4 THE COURT: Okay. Thank you.

5 Is there anyone else who's joined who
6 wishes to state their appearance?

7 MR. DELIKAT: Yes, Your Honor. It's Mike
8 Delikat, and I'm going to stand up for --

9 THE COURT: I'm sorry, sir. I can't hear
10 any of what you're saying. Your line is breaking
11 up.

12 MR. DELIKAT: Is that better?

13 THE COURT: Slightly.

14 MR. DELIKAT: Mike Delikat. And --

15 THE COURT: I'm sorry. I'm not hearing. I
16 think you said "Mr. Delikat," but it's very
17 difficult to hear you, sir.

18 MR. DELIKAT: I'll call on a landline.

19 THE COURT: If you could, please. Thank
20 you.

21 We'll wait for him to rejoin. In the
22 meantime, anyone else?

23 Okay. Thank you. We'll begin once we have
24 Mr. Delikat rejoin us.

25 Was that Mr. Delikat who just rejoined?

1 MR. DELIKAT: Yes. I'm back in on a
2 landline, Your Honor, for Defendant Mogul, and I'm
3 joined by my colleague, Brianna Messina.

4 THE COURT: Okay. Thank you very much.
5 All right.

6 Well, we're here today because Mr. Cuomo
7 requested a conference with respect to his subpoenas
8 to Ms. Boylan and the Attorney General's Office. I
9 did just first want to say, though, that the Court
10 received a barrage of filings from the parties and
11 the non-parties over the last 24 hours, including as
12 recently as 19 minutes before the conference, which
13 is very much unappreciated. Some of the filings
14 were the transcripts, which the Court had to request
15 because there were transcripts from the proceedings
16 in front of Judge Merkl that the parties referred to
17 or were otherwise relevant to this and the parties
18 neglected to provide them. And then, otherwise,
19 last minute requests to appear, which the Court has
20 granted, and then an additional submission of
21 documents that I was somehow expected to review in
22 the 19 minutes before this conference began. That's
23 unappreciated. It's disappointing, given the
24 quality of the federal practitioners who are
25 appearing on this call, and the Court does not

1 countenance it.

2 Going forward, we will put additional
3 restrictions on the deadlines for the parties to
4 comply with before conferences, but we will not
5 countenance chaos, and the parties should be aware
6 of that and should comport themselves accordingly.

7 Now, I'd like to begin with the subpoena to
8 Ms. Boylan, but what I would like to start with on
9 that issue, though, is the question of the status of
10 Ms. Bennett's production of documents; specifically,
11 her communications with Ms. Boylan to date.

12 So, Ms. Schnell, could I ask you to start
13 with that, please.

14 MS. SCHNELL: I believe we have produced
15 those documents, Your Honor.

16 THE COURT: Okay. So there are no
17 remaining communications between Ms. Bennett and
18 Ms. Boylan that remain to be produced?

19 MS. SCHNELL: Not that I'm aware of. I
20 will double-check, but I am pretty confident of
21 that.

22 THE COURT: Okay. And are there any other
23 documents that Ms. Bennett has that are somehow
24 communications or other correspondence relating to
25 Ms. Boylan?

1 MS. SCHNELL: No.

2 THE COURT: All right. Thank you. Okay.

3 Would Mr. Cuomo's counsel like to start,
4 specifically, now that you do have documents that
5 Ms. Bennett has produced, or communications that Ms.
6 Bennett has produced with respect to Ms. Boylan, who
7 is obviously not a party to this case, why anything
8 further from Ms. Boylan is relevant and necessary?

9 MS. TRZASKOMA: Good afternoon, Your Honor.
10 Theresa Trzaskoma, and I will start by apologizing
11 for any chaos. That is certainly not our intention,
12 and we appreciate a no-chaos rule and will abide by
13 it. I think, you know, the last minute -- the very
14 last-minute filing was simply to put before
15 Your Honor, not expecting Your Honor to have an
16 opportunity to review it before this conference, but
17 so that you would have it available afterwards.

18 But we have received from Ms. Bennett
19 certain communications with Ms. Boylan which confirm
20 what we believed, which is that Ms. Bennett and
21 Ms. Boylan were in communication. We thought it was
22 at least as early as January of 2021, but we now
23 know that it was a month earlier, in early December,
24 right around the time that Ms. Boylan first made
25 public allegations against Governor Cuomo.

1 We know from those communications that they
2 were coordinating with each other, with others, with
3 PR consultants, with Ms. Boylan's campaign staff,
4 with reporters. And, you know, our view -- and we
5 don't know whether Ms. Bennett retained everything
6 that Ms. Boylan retained.

7 For example, we believe that they may have
8 been communicating on self-deleting -- you know,
9 apart from what we got, which are communications
10 across a variety of platforms, like Instagram,
11 Twitter, other forms of communication. We think
12 that they were -- they may have been communicating
13 on encrypted apps, like Confide and Signal, that are
14 self-deleting. I don't know.

15 It appears, perhaps, Ms. Bennett didn't
16 retain any of that, if it existed. I don't know if
17 it exists with Ms. Boylan. I know it appears, for
18 example, from the discovery that we've seen, that
19 Ms. Boylan was or is writing a book. We believe
20 that she likely retained -- she probably kept notes
21 of her calls.

22 For example, we know that there was a
23 call -- at least one, probably many more -- calls
24 between Ms. Bennett and Ms. Boylan. I don't know if
25 Ms. Boylan took notes of those calls, if she

1 conveyed to other third parties, including the
2 reporters, the PR folks, other complainants,
3 information that she was getting from Ms. Bennett or
4 information she was conveying to Ms. Bennett.

5 So, in short, I don't have any confidence
6 that the entire universe of their communications you
7 know, has been provided to us. And Ms. Boylan is a
8 non-party, but she is a highly relevant witness for
9 purposes of discovery. I will note that she --
10 Ms. Boylan was identified in both our initial
11 disclosures and in Ms. Bennett's initial
12 disclosures.

13 I know that Ms. Boylan is relying on a
14 letter that Ms. Bennett's counsel sent saying that
15 they do not intend at this time to call Ms. Boylan
16 as a witness at trial. I don't think that has any
17 bearing on whether we're entitled to take discovery
18 from Ms. Boylan. But I would note that Governor
19 Cuomo may well call Ms. Boylan as a witness at
20 trial, and, you know, in large part because it's
21 hard to understand -- you know, almost impossible to
22 understand the circumstances of Ms. Bennett's coming
23 forward with her public allegations against the
24 governor without understanding what was going on
25 with Ms. Boylan.

1 And there are other -- you know, I'm happy
2 to address the relevance issues, but just in terms
3 of the question that Your Honor posed, which is, why
4 do we need additional discovery, document discovery
5 from Ms. Boylan, I think there is likely a treasure
6 trove there, and we're entitled to it.

7 THE COURT: Well, I'd just like to
8 understand, with respect to Mr. Cuomo's subpoena to
9 Ms. Boylan, though. I'm just pulling it up here.
10 It's pretty broad. You know, there are 19 different
11 requests here, and they don't just relate to
12 Ms. Bennett. Number 1 and number 17 do, but there's
13 a lot here as to Ms. Boylan, who is not a party to
14 this case. And although there's a reference, two
15 references in paragraphs 5 and 125 to her
16 announcement of her allegations against Mr. Cuomo.
17 She's otherwise -- those are not described in
18 detail. So I'm just -- I'm struggling with why
19 anything other than her communications with
20 Ms. Bennett, which you may have some, but admittedly
21 maybe not all, of why there's anything else here
22 that's relevant in that regard.

23 MS. TRZASKOMA: Yeah, I mean, I think this
24 goes to Governor Cuomo's -- it, in part -- so it
25 goes to two things, Your Honor. One, it goes to

1 what I would say is Ms. Bennett's credibility and
2 her motivations in coming forward. And so, you
3 know, Ms. Bennett -- or Ms. Boylan was making
4 allegations, and Ms. Bennett was coordinating with
5 her.

6 And as we discussed on the call relating to
7 Hamilton College, we do think that there is a theme
8 with Ms. Bennett, which is that she made supporting
9 victims of sexual harassment and sexual assault,
10 kind of, her personal brand. And I'm not saying
11 that lightly. I'm saying that based on a résumé
12 that I have seen, and on, you know, her e-mails to
13 others.

14 And I think, you know, we're entitled to
15 explore what motivated Ms. Bennett to come forward,
16 which were Ms. Boylan's allegations. At some point,
17 information started to come out that Ms. Boylan was
18 unreliable and untruthful. And Ms. Boylan -- I
19 mean, Ms. Bennett, nevertheless, continued to stand
20 shoulder to shoulder with Ms. Boylan. And I think
21 that is very important information relevant to Ms.
22 Bennett's motivations and her credibility. And, you
23 know, we believe that Ms. Bennett embellished her
24 allegations in order to support Ms. Boylan and
25 continued to do so even after it became clear that

1 Ms. Boylan had not been truthful.

2 And so it's all those circumstances around
3 what was happening in late 2020, in the beginning of
4 2021, where, you know, they are all -- where
5 Ms. Bennett and Ms. Boylan are communicating with
6 reporters, they're communicating with PR folks, and
7 they're communicating with other complainants to
8 recruit others to come forward. And the fact that
9 Ms. Boylan was not truthful, had ulterior motives,
10 and, you know, either hoodwinked Ms. Bennett or
11 manipulated her is an important part of Governor
12 Cuomo's defense.

13 THE COURT: Right. But all of that is
14 going to be in their communications with each other.
15 There's not going to be a mini trial in this case
16 about Ms. Boylan. She's not a party to this case.
17 And Mr. Cuomo doesn't have any claims against
18 Ms. Boylan in this case. So going for the --

19 MS. TRZASKOMA: Well, I --

20 THE COURT: -- throat of the truth or
21 falsity of what Ms. Boylan was alleging, even if
22 what Ms. Boylan was alleging was false, and I have
23 no finding on that one way or the other, that
24 doesn't mean that what Ms. Bennett said was true or
25 false. Those two things are totally independent of

1 each other.

2 MS. TRZASKOMA: Well, I'm not proposing a
3 mini trial, certainly, Your Honor, but what I am
4 proposing -- what we are seeking is, you know, under
5 the broad ambit of what's discoverable, we are
6 seeking information about the reliability of
7 Ms. Boylan's own allegations and the fact that
8 Ms. Bennett willingly jumped on that bandwagon
9 and -- and so, you know, Your Honor -- I mean, they
10 coordinated with each other. And the fact that
11 Ms. Bennett was coordinating with a person who was
12 not being truthful is, you know -- and who was doing
13 so -- Ms. Boylan was doing so for the purpose of,
14 you know, furthering her political campaign is
15 just -- it's really all part of the atmosphere of
16 what prompted Ms. Bennett to come forward.

17 And it's not a mini trial. It is, as I
18 said, like, you know, it's very relevant to what
19 Ms. Bennett was doing. And, you know, to the point
20 of -- I don't think this is all in their
21 communications necessarily. I think there's going
22 to be a lot of information about the nature and
23 reach and scope of their joint effort to coordinate,
24 recruit and encourage others is absolutely going to
25 be part of what's in Ms. Boylan's documents and not

1 necessarily part of what's in Ms. Bennett's.

2 THE COURT: I appreciate that, but there
3 has to be a tie to Ms. Bennett and her claim. And
4 what Ms. Boylan -- that Ms. Boylan may have
5 encouraged some other complainant to do something
6 independent of Ms. Bennett, that doesn't have
7 anything to do with this case. That's not relevant.

8 MS. TRZASKOMA: Well, I guess I -- I mean,
9 I hear that, but I vehemently disagree because I
10 think -- you know, for example, part of what we
11 think was motivating Ms. Bennett is that Ms. Boylan
12 was running for political office at the time this
13 all came out. Ms. Bennett may have been looking for
14 a job. I don't know. Maybe she wanted to work with
15 Ms. Boylan.

16 We have -- you know, part of the
17 information that we submitted to the Court is a
18 calendar invite between -- in December of 2020
19 between Ms. Bennett, Ms. Boylan and Ms. Boylan's
20 campaign manager, or who we believe is Ms. Boylan's
21 campaign manager.

22 And I do think that Governor Cuomo's
23 defense -- we don't want a mini trial, but we are
24 entitled to explore whether Ms. Boylan's allegations
25 were true or not and what Ms. Bennett knew or didn't

1 know about that. And I think, you know -- and
2 just --

3 THE COURT: When is --

4 MS. TRZASKOMA: -- there's a very big
5 difference between -- yeah. Sorry.

6 THE COURT: When is Ms. Bennett's
7 deposition?

8 MS. TRZASKOMA: I'm sorry?

9 THE COURT: When is Ms. Bennett's
10 deposition?

11 MS. TRZASKOMA: We have not scheduled it.
12 Ms. Bennett has not completed her production of
13 documents. On a call last week, I think, they were
14 not able -- Ms. Schnell was not able to tell us when
15 that would be completed. But we -- you know, but we
16 do want and are entitled to this non-party discovery
17 in advance of that deposition so that we have, you
18 know, as much information as we can get about what
19 was going on so that we are able to intelligently
20 and fully and capably question her on these issues.

21 THE COURT: Right. But why do you need it
22 before Ms. Bennett's deposition? I mean, Ms. Boylan
23 is a non-party, so necessarily the burden on her
24 should be minimized as much as possible. She's not
25 required to carry the load for Ms. Bennett. You

1 guys have to do your work. The defendants have to
2 do their work as to Ms. Bennett and bring out -- if
3 there are things that Ms. Bennett says about
4 Ms. Boylan, then you have a much stronger case -- or
5 much stronger argument why a further discovery from
6 Ms. Boylan might be relevant, but you're inverting
7 it in a way that's unfair to somebody who's a
8 non-party.

9 MS. TRZASKOMA: I don't think we are,
10 Your Honor. And I would note that plaintiff has
11 already taken non-party discovery, and Your Honor
12 has enforced non-party discovery without her having
13 taken a single deposition. So I don't -- I think,
14 you know, this is a normal discovery practice, which
15 is to gather as much information as possible about
16 the topics that you're going to depose a witness or,
17 you know, a party on, and to have that all available
18 to us. And I don't think Rule 26 put -- imposes a
19 particular order on us. And it's --

20 THE COURT: I wasn't saying that it did.
21 But in terms of somebody who has come forward and
22 objected, in part, on the grounds of burden, it
23 makes sense to --

24 MS. TRZASKOMA: Well --

25 THE COURT: -- pursue the information from

1 the parties first, and then see what's left and
2 what's needed from the non-parties.

3 MS. TRZASKOMA: Well, it's hard -- I mean,
4 part of this issue, Your Honor, is we have no idea
5 what Ms. Boylan has or what the burden is on her.
6 And I would say, you know, she has made this burden
7 argument without actually meeting her burden to show
8 it's some undue burden.

9 And, frankly, if she says, I have a million
10 communications with Ms. Bennett, and it's going to
11 require -- or with Ms. Bennett and about
12 Ms. Bennett, and it's going to take me a lot of time
13 to gather and produce them, that makes me want them
14 all the more. But I don't understand why she
15 cannot, for example, run simple search terms through
16 her communications and turn those over to us in
17 advance of our having to take Ms. Bennett's
18 deposition. And, likewise, I don't know why
19 Ms. Boylan cannot sit for a day-long deposition in
20 this matter.

21 THE COURT: All right.

22 MS. TRZASKOMA: And --

23 THE COURT: Go ahead. Finish your
24 statement, and then I want to hear from Ms. Boylan's
25 counsel.

1 MS. TRZASKOMA: Yeah. Again, just to go
2 back to the disclosures, both parties have
3 identified her as a witness with relevant
4 information, and under those circumstances, and
5 under all the circumstances here, you know, the
6 subpoena is proper and it should be enforced.

7 THE COURT: Thank you. All right.

8 Ms. Perry, do you or one of your colleagues
9 want to address the points that Ms. Trzaskoma has
10 made?

11 MS. PERRY: Yes. Thank you, Your Honor.
12 This is Danya Perry.

13 So just to, I guess, take the last point
14 made by Ms. Trzaskoma first, it's not the case that
15 both parties have identified her as a witness. As
16 Your Honor is aware, Ms. Katz, on behalf of the
17 plaintiff, has said they do not anticipate calling
18 Ms. Boylan as a witness. And it's certainly the
19 case that Mr. Cuomo does not want Ms. Boylan in this
20 case.

21 He has said in the Trooper 1 case that he
22 does not believe Ms. Boylan has relevant
23 information, as much as he's been hounding her with
24 subpoenas -- I believe we're up to 15. I may have
25 lost count -- in the other case, what he's trying to

1 do, and he said the quiet part out loud in that case
2 is relitigate the Attorney General's investigation
3 and prove himself, essentially, to be innocent.

4 In this case -- and he's also said another
5 quiet part out loud in that case, which is that he
6 does not -- you know, he had said in that case that
7 if Ms. Boylan had not been all over the complaint,
8 he would not be subpoenaing her.

9 Well, she really does not feature
10 prominently in this case. And, again, the plaintiff
11 has said that they're willing to take her out of the
12 case. But, nevertheless, he wants her in this case,
13 and it really is so that, as Ms. Trzaskoma just
14 said, they can impeach her. But there's no real
15 reason to impeach her. And it really is the
16 convoluted explanation that we just heard, was -- I
17 mean, in their letter they said it was to impeach
18 Ms. Boylan. They actually said that. And now,
19 under Your Honor's questioning, it was, well, it was
20 more indirect. It was to impeach Ms. Boylan to
21 somehow indirectly impeach Ms. Bennett.

22 That really is a bridge too far. It really
23 is to get campaign records and records about sexual
24 history and personnel records to somehow impeach
25 Ms. Boylan, which somehow would impugn Ms. Bennett

1 really, really is going too far afield.

2 But if we had been able to have a
3 productive meet and confer, I think we -- and
4 they've been willing to narrow the subpoena in some
5 ways -- I think we probably could have gotten to a
6 place where I do agree with Your Honor that
7 arguably, at least, requests number 1 and 17 are the
8 only requests that are moderately theoretically
9 relevant. Of course, they're overbroad because they
10 request all communications and all documents.

11 And I think, though, if the parties could
12 sit down and, you know, come to discussions, perhaps
13 communications that involve just sexual harassment
14 allegations against Mr. Cuomo, not all
15 communications with Ms. Bennett, perhaps there
16 are -- I don't know this, but perhaps there are
17 documents that would be relevant that have not been
18 produced. And so we would be willing -- as
19 Ms. Trzaskoma just said, we would be willing to run
20 limited searches for that. And I do agree it's
21 potentially relevant. I --

22 THE COURT: But can I interrupt -- can I
23 interrupt you for a second?

24 MS. PERRY: Of course.

25 THE COURT: Has Ms. Boylan done a search of

1 her communications to know what the universe is of
2 her communications with Ms. Bennett, what the volume
3 is?

4 MS. PERRY: Not just with Ms. Bennett. We
5 have -- in the other case, we had run a search and
6 there's a large volume of documents. I think we're
7 at about 500,000 that have been potentially relevant
8 in that case.

9 THE COURT: Okay.

10 MS. PERRY: And the subpoena in this case
11 is largely duplicative of that one, but I think if
12 the parties can come to terms, obviously, it would
13 be a much, much smaller universe of documents, and I
14 think that could be somewhat reasonable.

15 It is the case that Ms. Bennett and
16 Ms. Boylan are -- have become friendly, and they
17 talk about a lot of other things. I just reviewed
18 the communications that we got minutes before the
19 conference, and there are just a lot of, you know,
20 heart emojis, I think, and likes and that kind of
21 thing. So there are a lot of things I think would
22 be nonresponsive if we can just talk about, you
23 know, sexual allegations -- sexual misconduct
24 allegations. So I would like to think that
25 reasonable people can come to terms.

1 THE COURT: Do you know when Ms. Boylan and
2 Ms. Bennett began communicating about the
3 allegations against Mr. Cuomo?

4 MS. PERRY: Yes. I'm glad you asked,
5 Your Honor, because I did want to come to that
6 because Mr. Cuomo's papers -- the letter motion
7 requesting this conference says at least twice, and
8 it has been a theory of the case, that Ms. Boylan is
9 the provocateur in this case, that she induced other
10 people, including Ms. Bennett to the point here to
11 come forward; that she was the person that created
12 this domino effect.

13 And with regard specifically to
14 Ms. Bennett -- and from what I've seen in the
15 seconds that I had to look at these communications,
16 Ms. Bennett, it seems, from the complaint, came
17 forward with her sexual harassment allegations in
18 the spring or summer of 2020. She did not know
19 Ms. Boylan at the time. They had never met. They
20 knew nothing about each other. They were
21 completely, you know, parallel, had their own
22 independent, traumatic sexual harassment experiences
23 with the then-governor, and did not know each other,
24 had not spoken until Ms. Boylan came forward in
25 December of 2020. This is my understanding with

1 public tweets.

2 And then it was Ms. Bennett, as I
3 understand it, who came forward and reached out to
4 Ms. Boylan. This is my understanding. And, again,
5 I have an imperfect understanding, and I just saw
6 these records.

7 THE COURT: You're not under oath.

8 MS. PERRY: Thank you, Your Honor.

9 And so I think that's an inaccurate
10 rendition of the facts here, to say that Ms. Boylan
11 was the instigator here who created, you know, this
12 whole domino effect that took the governor down.

13 But, in any event, I think that, you know,
14 these -- I believe it's 19 categories of
15 documents -- really has nothing whatsoever to do
16 with the facts in this case -- I'm sorry, 17
17 categories of documents -- other than, as I
18 mentioned, you know, the communications and the
19 documents that go specifically to communications
20 with the plaintiff in this case and to her lawsuit.

21 And so I certainly would be willing to sit
22 down with Ms. Glavin and Ms. Trzaskoma and see if we
23 can work out reasonable search terms. I would like
24 to think that we can and wouldn't have to burden the
25 Court with that.

1 THE COURT: Okay. Thank you.

2 I do want to give Ms. Trzaskoma a chance to
3 respond, but I should hear from Ms. Sulkowski next
4 on behalf of Ms. DeRosa.

5 MS. SULKOWSKI: Thank you, Your Honor.
6 Sarah Sulkowski.

7 Your Honor, we agree with Governor Cuomo's
8 counsel, that it's clear that Ms. Boylan was the
9 instigator of the process that led to the filing of
10 this complaint. And importantly, the plaintiff, in
11 re-tweeting Ms. Boylan's initial allegations against
12 the governor, said expressly that these allegations
13 are emblematic of what the executive chamber under
14 Governor Cuomo was like, and, it appears, tailored
15 her own accusations to match those.

16 And so evidence that Ms. Boylan's
17 allegations were false and that she had -- her
18 credibility is at issue and that she had a motive to
19 lie, or perhaps multiple motives to lie, would go
20 directly to plaintiff's own credibility and the
21 credibility of her allegations. I don't think that
22 should be overlooked.

23 Again, you know, plaintiff's initial
24 disclosures named Ms. Boylan, not as a witness, but
25 as an individual likely to have discoverable

1 information relevant to this action. And those
2 initial disclosures have not been revised or
3 corrected. They're still extant, as well as
4 Ms. DeRosa's and Governor Cuomo's initial
5 disclosures, all of which identify Ms. Boylan as
6 having discoverable information.

7 THE COURT: All right. Well, it's
8 basically undisputed, and there's evidence now
9 before the Court that she had communications with
10 Ms. Bennett about her allegations concerning
11 Governor Cuomo. So I don't think there's any
12 dispute that the initial disclosures are correct in
13 including Ms. Boylan, but I think you're placing a
14 lot more weight on that than is warranted.

15 MS. SULKOWSKI: Well, the concept of
16 relevant information under Rule 26 is broad for a
17 reason: Because parties should be able to explore,
18 you know, what a plaintiff -- particularly what a
19 plaintiff herself denominates as relevant
20 information.

21 I know the Court doesn't have Ms. DeRosa's
22 document subpoena in front of it. I apologize for
23 that, but we didn't want to submit it at the last
24 minute. But it does seek categories of documents
25 extremely similar to those sought by Governor Cuomo;

1 for example, communications with or about Ms. DeRosa
2 and Governor Cuomo during the relevant period.

3 These, even if not directly with plaintiff,
4 go to the working environment in the executive
5 chamber, which is a core part of the allegations of
6 both women and, thus, to plaintiff's claims and
7 Ms. DeRosa's defense for those claims.

8 Communications concerning investigations of
9 allegations against Governor Cuomo -- you know,
10 again, if Ms. Boylan was orchestrating a campaign
11 against the governor, as we believe she was, these
12 communications may reveal that, and that would go to
13 Ms. Bennett's credibility as well.

14 THE COURT: How?

15 MS. SULKOWSKI: Well, again, if Ms. Boylan
16 persuaded Ms. Bennett to join her, or if
17 Ms. Bennett, on her own conformed to what we think
18 is her pattern of behavior, which is to see a woman
19 alleging sexual harassment or assault and to try to
20 buttress her claims with her own allegations,
21 perhaps by exaggerating things she experienced that
22 were de minimus, you know, the -- Ms. Boylan's
23 communications evidencing that orchestrated campaign
24 or the falseness of her own allegations that
25 Ms. Bennett then tailored her own to match would be

1 highly relevant.

2 THE COURT: Then all falls into the two
3 that we've been talking about, that Ms. Boylan's
4 counsel just said she was willing to work with you
5 about, which is the communications between
6 Ms. Bennett and Ms. Boylan.

7 MS. SULKOWSKI: Respectfully --

8 THE COURT: Yet that doesn't get you to all
9 of her communications with anybody else in the
10 governor's office about other complainants, for
11 example.

12 MS. SULKOWSKI: We think those would be
13 relevant because, again, if Ms. Boylan's
14 allegations, which Ms. Bennett has referred to as
15 emblematic, as indicative of what it was like in the
16 executive chamber, before she ever aired her own, if
17 those are false and her communications with others
18 demonstrate that they're false or they're
19 exaggerated or they're trumped up, that's relevant
20 to what plaintiff subsequently did and why she did
21 it.

22 I would like to mention at this point that,
23 you know, we had a meet and confer with Ms. Boylan's
24 counsel. They said they would take our requests
25 under consideration. They later came back to us and

1 reiterated that they would not produce anything to
2 us. And I would note that I believe
3 Governor Cuomo's counsel has received a de minimus,
4 you know, 25 pages. We haven't even received that.
5 We've received nothing. And they've told us we will
6 receive nothing. I appreciate their expressed
7 willingness today to reconsider that position, but I
8 don't think we should be forced to go back into a
9 meet and confer with counsel who could have made
10 these offers long ago without getting a ruling and
11 potentially, quite likely, have to be back before
12 the Court in short order.

13 THE COURT: Well, it's not shocking to me
14 that this group is not able to reach agreement among
15 themselves without Court intervention. So you're
16 here now, and I'm going to give you guidelines for
17 how you're going to meet and confer and what the
18 scope is going to be. But let me hear from Ms.
19 Trzaskoma again. In particular, if you could
20 address, you know, if the date range were to begin
21 in December 2020, for example, you know, tell me why
22 that's not sufficient.

23 MS. TRZASKOMA: Oh, that for us, is
24 sufficient. That is when -- I mean, we didn't know
25 when -- so, you know, as Ms. Perry said -- I think

1 she said that they didn't know each other, that
2 Ms. Bennett and Ms. Boylan didn't know each other
3 before then or, you know, may not have been
4 communicating.

5 But, in any event, it's really about the --
6 it's really about that time frame. We now know
7 that's basically when they started communicating, so
8 we're -- so, you know, we thought that the request
9 was not overly broad because it would be naturally
10 limited in time by the -- you know, when they were
11 communicating.

12 But I -- you know, I wanted -- I appreciate
13 Ms. Sulkowski's comments because I think they mirror
14 ours, which is -- so Ms. Bennett had complaints. As
15 I understand it, those -- the nature of her
16 complaints changed significantly and dramatically
17 after she started communicating with Ms. Boylan and
18 after -- she never said previously -- and I know --
19 she's going to disagree, I'm sure. It's not what
20 her complaint reflects, but I believe it's what the
21 evidence will reflect -- that she did not previously
22 complain that she was sexually harassed. And that
23 changed after she started speaking with Ms. Boylan.

24 And, you know, for Governor Cuomo's defense
25 of this case, I do not -- he is going to rely on

1 Ms. Boylan and the fact that she was out in public
2 making false accusations and using those false
3 accusations to recruit others to embellish their own
4 claims. And that is his defense. And I appreciate
5 that Ms. Boylan doesn't like it, Ms. Bennett doesn't
6 like it, a lot of the other complainants don't like
7 it, but that is his defense.

8 And just to Ms. Perry's point about the
9 issues in Trooper 1, as Your Honor knows, that
10 complaint is very different than this complaint; but
11 they both share a reliance on the Attorney General's
12 report. The Attorney General's report is part of
13 Ms. Bennett's complaint, just as it is Trooper 1's.
14 They have slightly different consequences. But
15 Ms. Bennett's entire retaliation claim has to do
16 with statements that were made on Governor Cuomo's
17 behalf after the AG report came out. And you cannot
18 understand the purpose of those statements and the
19 defense of him without understanding that the AG
20 report and investigation were deeply flawed, were
21 full of inaccuracies, and contained, you know,
22 allegations, credited allegations, including
23 Ms. Boylan's.

24 So, you know, to try to disentangle -- and
25 in Trooper 1, Judge Merkl, you know, I think

1 approached that case -- and you can see it,
2 Your Honor, I think, in the transcripts, which,
3 again, I apologize for not providing to Your Honor
4 earlier. I think you can see it there, that
5 Judge Merkl was hoping that case would get whittled
6 down, but it is as broad as it ever was.

7 And, you know, so to say that we wanted to
8 relitigate the Attorney General's report, yeah,
9 because it is front and center in that case, and it
10 is inevitably, unless the retaliation claims get
11 dismissed, it is going to be part of this case.

12 So it's not -- it is chopping us off at the
13 knees to say there can be a lawsuit that complains
14 about a defendant's reaction to a public report and,
15 you know, about statements that were made about how
16 unreliable it was and not for -- for Governor Cuomo
17 not to be able to explain to a jury why he believed
18 that and why it is true that it's unreliable.

19 So, you know, I think, and I appreciate
20 that Your Honor is going to give some guidance, but
21 I don't think that it is appropriate to say that
22 we're getting only the communications directly
23 between Ms. Bennett and Ms. Boylan because I do
24 think that Ms. Boylan was communicating with a lot
25 of other people around Ms. Bennett and Ms. Bennett's

1 allegations, and we were entitled to that as well.

2 THE COURT: Okay. Thank you.

3 MS. TRZASKOMA: And the final thing I would
4 say is I know that there is this letter, as I
5 mentioned, that, you know, Ms. Bennett is not going
6 to call Ms. Boylan as a trial witness. But in her
7 initial disclosures, she says she is going to rely
8 on Ms. Boylan's and Trooper 1's allegations. And if
9 Ms. Bennett is going to rely -- even if not calling
10 her as a trial witness, if she is planning to rely
11 in any way, shape, or form on Ms. Bennett's
12 allegations, we are entitled to full discovery about
13 those allegations.

14 THE COURT: Okay. Thank you.

15 Ms. Schnell, can you speak to that last
16 point about the suggestion that Ms. Bennett may be
17 relying on Trooper 1's or Ms. Boylan's allegations
18 to support her?

19 MS. SCHNELL: No. If you look -- we don't.
20 If you look at the complaint, we do not -- unlike
21 the Trooper 1 complaint, which if you looked at it,
22 Your Honor, it includes lengthy sections on each of
23 the women who made complaints about Governor Cuomo.
24 Ms. Bennett's complaint does not. Ms. Bennett's
25 complaint stands on whether she was sexually

1 harassed by Mr. Cuomo, not whether any of these
2 other women were.

3 THE COURT: Okay. Thank you.

4 Ms. Perry, any points that you want to
5 respond to before we try to have a more focused
6 discussion of the scope guidance that I'm going to
7 give you? And let me just say before you do that,
8 Ms. Longley, I appreciate that you've been waiting
9 here for 45 minutes. We will get to you very
10 shortly.

11 Go ahead, Ms. Perry. Any points you want
12 to make in response to what either Ms. DeRosa's or
13 Mr. Cuomo's counsel said?

14 MS. PERRY: I don't think I do, Your Honor.
15 Ordinarily, I do, but it's almost impossible to
16 respond to because there's nothing focused there.
17 They're basically just saying -- I mean, they have
18 said very explicitly, we want to relitigate the
19 entirety of the AG's report and that wasn't fair to
20 the governor, and, therefore, we get to take
21 incredibly broad, incredibly damaging, incredibly
22 burdensome, not particularly relevant discovery of a
23 non-party. And how can I really even respond to
24 that?

25 You know, I've made my points. If Your

1 Honor is even considering it, I certainly would
2 request some process and the opportunity to brief
3 that, but it just seems to me so outlandish and so
4 beyond the pale that it's hard to respond to at this
5 point any more than that.

6 THE COURT: Okay. Well, before we end
7 up -- I'm hoping to avoid any motion practice
8 altogether, so that's why I want to give you
9 guidance about what I want you to meet and confer
10 about, and hope that we can come to a resolution
11 through that process without there having to be
12 motion practice as to the other request.

13 So what the -- what I think the scope
14 should be, focusing on request number 1, which is
15 communications with Ms. Bennett about any
16 allegations of sexual harassment or misconduct by
17 Governor Cuomo, and number 17, which is
18 non-privileged communications concerning this
19 lawsuit -- this lawsuit or Ms. Bennett's lawsuit
20 against New York State, which, obviously, is not
21 before me, but I think the parties should focus on
22 those two requests.

23 To Ms. Trzaskoma's point, is not limited to
24 just communications between Ms. Bennett and
25 Ms. Boylan, but if Ms. Boylan had any communications

1 about Ms. Bennett or Ms. Bennett's allegations with
2 someone else, then the search terms should -- that
3 the parties agree on should capture those
4 communications as well.

5 And then the time period would be from
6 December 2020. I don't know the exact date in
7 December, but the parties should have that.
8 December 2020 through, I believe it's September 14,
9 2022, which is the date Ms. Bennett filed her
10 complaint in this case, and that was the same
11 limitation that we put on the non-party subpoena to
12 Mr. Cuomo's sister back in November.

13 So let me just first ask Ms. Perry if those
14 scope limitations need any clarification.

15 MS. PERRY: No. I think that's clear,
16 Your Honor. Thank you.

17 THE COURT: Okay. Ms. Trzaskoma?

18 MS. TRZASKOMA: I think we would just want
19 to make sure that it's through the date of the
20 subpoena, so from December 2020 through the date of
21 the subpoena. And I appreciate Your Honor's
22 clarification of that.

23 THE COURT: Why? Why past the date that
24 the complaint was filed?

25 MS. TRZASKOMA: Because I believe they -- I

1 mean, look, I don't know if there's a representation
2 that they did not communicate about Ms. Bennett's
3 lawsuit or allegations after the lawsuit was filed.
4 Then there should be no issue. But if there were
5 communications about the lawsuit afterwards, that's,
6 you know, also relevant.

7 MS. PERRY: Your Honor, why don't we look
8 at that and --

9 THE COURT: Yes. Why don't you see what
10 the volume is.

11 MS. PERRY: -- something we can talk about.
12 Yes.

13 THE COURT: Maybe you can do a -- yeah,
14 Ms. Perry, maybe you can do a cutoff at the date of
15 the complaint and then afterwards and see what the
16 volume is after. I'm trying to be consistent with
17 respect to the non-parties, and I'm also, again,
18 mindful of the burden on Ms. Boylan, so, hence, the
19 desire to -- I mean, that already is an almost
20 two-year time period that we're imposing on her.

21 So, for now I'm going to limit it to the
22 same cutoff date of September 14, 2022 as we imposed
23 with respect to Ms. Cuomo, but the parties can meet
24 and confer about that. If there are, you know, two
25 things in January 2023 or something, then it's

1 presumably not very burdensome, but a -- well, for
2 now, the cutoff date will be September 14, 2022.

3 Okay. With that guidance -- I'm sorry.

4 Ms. Sulkowski, did you want any clarification or
5 comment on the proposed scope limitation?

6 MS. SULKOWSKI: No. That's clear,
7 Your Honor. Thank you.

8 THE COURT: Okay.

9 All right. I appreciate the parties'
10 willingness to meet and confer about that. And at
11 the end of this conference, we'll talk about a date
12 by which I'll want a report back from you on that.

13 Any other issues with respect to the
14 subpoena to Ms. Boylan at this time?

15 MS. TRZASKOMA: Your Honor, this is Theresa
16 Trzaskoma.

17 Not with respect to the subpoena to
18 Ms. Boylan or directly, but just to what Ms. Schnell
19 represented to the Court in terms of Ms. Bennett not
20 relying on Ms. Boylan's allegations. And, you know,
21 I just want to clarify that she -- that what I
22 understood Ms. Schnell to be saying is that she was
23 relying solely on -- Ms. Bennett was going to rely
24 solely on her own allegations, and that she was not
25 going to rely on the allegations of Ms. Boylan or

1 anyone else, to include, for example, Trooper 1, in
2 connection with establishing her claim.

3 And so it would be helpful to get clarity
4 on that because that's not what the -- you know,
5 that's not what's in the complaint and it's not
6 what's in their initial disclosures. And so I --
7 you know, I want to make sure, as we're going
8 forward with discovery, that we have a clear
9 understanding of what this is going to look like as
10 we go forward.

11 THE COURT: Well, I mean, you can get a
12 transcript of this conference, and you'll have
13 Ms. Schnell's words.

14 But, Ms. Schnell, if there's anything you
15 want to elaborate on or clarify, you're welcome to.

16 MS. SCHNELL: You know, if you look at the
17 complaint, we certainly reference the fact that
18 Lindsey Boylan came forward and made a blog post.
19 And that is a fact that, then, Charlotte came --
20 Ms. Bennett came forward as well.

21 So are we not going to refer to that fact
22 in terms of the chronology of what happened here?
23 But we are not going to call her, we are not going
24 to try to prove that Governor Cuomo sexually
25 harassed her at all.

1 MS. TRZASKOMA: Your Honor, this is --
2 again, this is Theresa Trzaskoma.

3 This is exactly my concern, is that if
4 Ms. Bennett is going to get up and say Ms. Boylan
5 made allegations against Governor Cuomo and I
6 decided to come forward too, we're entitled to show
7 that these other allegations are not true.

8 THE COURT: But Ms. Bennett is not saying
9 that what Ms. Boylan alleged is true. She's saying
10 that she said it. And all of this -- that's all a
11 question for Judge Broderick, if and when any of
12 these claims get to trial, what the scope of the
13 evidence will be that is actually before the jury.
14 So --

15 MS. TRZASKOMA: Well, I -- I think that it
16 is --

17 THE COURT: I'm not going to --

18 MS. TRZASKOMA: I just want to make a
19 record that Governor Cuomo is being denied discovery
20 into that point because I do not -- because it is
21 extremely prejudicial if this is supposed to be a
22 case solely about Ms. Bennett and Ms. Bennett gets
23 in the side door someone else's -- the fact that
24 someone else made an allegation, which the jury,
25 inevitably, without -- you know, without our ability

1 to say that that allegation turned out to be totally
2 fabricated and hogwash, you know, and to prove it,
3 to back it up, I think that's just -- that's exactly
4 the point, that this -- you know, we're not even
5 going to be in a position to move in limine properly
6 if we cannot show the incredible prejudice that
7 would result.

8 I mean, just imagine the motion in limine,
9 which is, you know, without the benefit of being
10 able to establish through discovery that Ms. Boylan,
11 you know, fabricated, lied, threatened witnesses
12 and, you know, lied about the circumstances under
13 which she left EFD.

14 You know, her initial allegation is that
15 she left because Governor Cuomo harassed her, and
16 that's not true. That's the allegation that
17 Charlotte Bennett is going to be referring to.

18 THE COURT: Okay. But it is not correct
19 for you, your statement, Ms. Trzaskoma, that
20 Mr. Cuomo is being denied discovery. I just ordered
21 that he's being allowed to get discovery and I
22 circumscribed the scope of it. So don't distort the
23 record and don't put words in my mouth. If --

24 MS. TRZASKOMA: Well, I -- so I -- Your
25 Honor --

1 THE COURT: Ms. Bennett does not need to
2 even mention Ms. Boylan. The question is whether
3 what she alleged Mr. Cuomo did, whether that
4 happened or not. The only thing that matters is
5 what Ms. Bennett says about that.

6 MS. TRZASKOMA: I --

7 THE COURT: So I realize that the
8 allegation is in the complaint that Ms. Boylan said
9 something first, but it's not relevant to whether
10 what Ms. Bennett is alleging is true or not; and
11 continually trying to shove that door open is not
12 going to work.

13 MS. TRZASKOMA: No. Your Honor, I am not
14 trying -- I would like the door to be slammed firmly
15 shut, and Ms. Schnell has left the door wide open.
16 And I apologize for overstating that the Court is
17 not denying us discovery, but has limited the
18 discovery such that we, Governor Cuomo is not going
19 to be in a position to be able to establish, you
20 know, in the event that Ms. Bennett gets up and says
21 Ms. -- I saw this tweet from Ms. Boylan, she said
22 this happened to her, and we have to be able to meet
23 that. And I don't have any -- you know, we're
24 not -- this is still early discovery. I don't have
25 a crystal ball. I can't foresee the future, but

1 I -- you know, I think it -- to allow Ms. Bennett
2 even to make that statement or even to contemplate
3 that she's going to be able to make -- or try to
4 make that statement without giving Governor Cuomo
5 discovery into that issue is very problematic.

6 THE COURT: Well, at this time, I have not
7 been persuaded that requests 2 through 16 and 18 and
8 19 are relevant and proportionate to the needs of
9 this case. So at this time, based on the record
10 before me, the only request to which Ms. Boylan is
11 going to be required to respond, and the parties
12 have been given guidance about how to meet and
13 confer about a scope for that response, are numbers
14 1 and 17.

15 If something changes and Mr. Cuomo thinks
16 that he has good cause to have me broaden the scope
17 of what I have permitted as to Ms. Boylan, you can
18 come back and show me that. That's always the case.
19 But in -- for now, you have this transcript. And if
20 something changes and you have good reason to come
21 back to me and show me that something more is
22 warranted, you can do so. But we need to move on.

23 MS. TRZASKOMA: I appreciate that,
24 Your Honor.

25 THE COURT: We need to move on to the

1 Attorney General folks who have been very, very
2 patient.

3 So do you want to address -- to start with
4 that, Ms. Trzaskoma, the issues with respect to the
5 AG and, in particular, their suggestion that we stay
6 that while Judge Merkl is completing her
7 consideration of the motion for reconsideration?

8 MS. TRZASKOMA: So as I -- so I don't think
9 that there's any reason for this Court to defer to
10 what is happening in the Trooper 1 action. And as I
11 understand it, I don't -- that motion for
12 reconsideration was fairly limited to the July 2023
13 order on our motion to compel, which has -- you
14 know, is no longer relevant because what we're
15 talking about and what Judge Merkl is considering
16 now with respect to the documents from the AG's
17 Office is a completely different universe of
18 materials, much narrower.

19 And, you know, so I don't actually know
20 that Judge Merkl is considering the motion for
21 reconsideration, but the issues that the AG has
22 raised in any event, were never decided by
23 Judge Merkl's July 2023 order. They are presenting
24 in this case in a completely different way, and I
25 think that we should move on to briefing those

1 issues. They are, you know, complicated issues.
2 The Attorney General has claimed, you know,
3 sovereign immunity from any subpoena and has also --

4 THE COURT: Let's just -- let's back way
5 up, though.

6 MS. TRZASKOMA: Yes.

7 THE COURT: Have there been any discussions
8 about what the AG may be willing to produce to you?

9 MS. TRZASKOMA: Our understanding is the AG
10 is willing to produce nothing to us.

11 THE COURT: All right.

12 Ms. Longley, is that the case? Or is there
13 some universe -- and I know you had lengthy
14 discussions with Judge Merkl in the Trooper 1 case
15 about what narrow range of materials that the AG was
16 willing to explore.

17 To the extent that I'm right about that, is
18 there any universe of documents with respect to
19 Ms. Bennett; and you've just heard the lengthy
20 discussion about how we're trying to focus non-party
21 discovery on Ms. Bennett's allegations here. Is
22 there anything that the AG has that it would be
23 willing to consider providing?

24 MS. LONGLEY: Hi. Yes, Your Honor. Our
25 office is always willing to consider anything

1 reasonable and proportional and relevant to the case
2 if it will resolve the subpoena and not require us
3 to engage, continually engage in this burdensome
4 litigation. We were willing to try that in
5 Trooper 1. Unfortunately, it did not result in
6 resolving the subpoena.

7 We are -- you know, we -- I would say, as a
8 general matter we would -- we were open to a similar
9 approach to the Bennett subpoena; however, when we
10 said, are there any path forward where we give you
11 non-privileged materials that are tailored to the
12 complaint and the legal claims in the Bennett case,
13 the answer was, we want the interview memos, and
14 they will not agree to any resolution that doesn't
15 include interview memos. And given the extensive
16 litigation we've had with them on multiple fronts,
17 we're not willing to give it piecemeal and just give
18 them some materials if it's not going to resolve the
19 subpoena.

20 So in Trooper 1, we did voluntarily give
21 them in an act of good faith -- in an opening act of
22 good faith, we said, here, we'll look at documents
23 that were collected by the investigators that
24 reference Trooper 1 by name. And we believe you
25 could get these materials under the FOIL statute,

1 which is the way the State has waived sovereign
2 immunity in the context of -- you know, as it would
3 relate to this case.

4 So we offered that. We thought it was
5 reasonable. It didn't go -- you know, it didn't go
6 as we would have liked it to go. So I think in this
7 case, you know, we would be willing to do that if
8 Defendant Cuomo would agree that that would resolve
9 the subpoena and he wouldn't move to compel
10 compliance and seek our privileged material.

11 THE COURT: So, Ms. Trzaskoma, is the
12 interview memo do or die?

13 MS. TRZASKOMA: Yeah, that's what we're
14 seeking, Your Honor. And we don't agree that they
15 are privileged. And we don't agree that the
16 Attorney General's Office enjoys sovereign immunity
17 from federal subpoena.

18 And I don't -- you know, what we got in
19 Trooper 1 were four documents with Trooper 1's name
20 on them. They were, like, telephone records or
21 something. And, you know, it's not it -- it's not
22 the material that we're looking for. We're looking
23 for prior statements by witnesses with information
24 relevant to Ms. Bennett's claims.

25 And so I don't think there's any point in

1 delaying. I think, you know, we need to move on
2 with briefing this. And we just vehemently disagree
3 on the law here.

4 THE COURT: Okay. But how is Judge Merkl's
5 ruling -- she quashed your subpoena in --

6 MS. TRZASKOMA: She did not quash it.

7 THE COURT: Well, she denied your motion to
8 compel, I guess, so --

9 MS. TRZASKOMA: She did. She found it was
10 too broad, and it has since been narrowed. And she
11 now then directed the Attorney General's Office to
12 provide a privilege log of the interview memos,
13 which the AG's Office did. Judge Merkl then
14 directed the AG's Office to provide her with those
15 interview memos for in camera review, which the
16 Attorney General did in late -- or, like, mid- to
17 late December.

18 I don't know how Judge Merkl -- what
19 Judge Merkl's plan is, but I don't think it involves
20 resolving the objections that the Attorney General's
21 Office has -- is asserting here, and including, you
22 know, sovereign immunity, so -- and the universe of
23 documents is different. And --

24 THE COURT: But it's the interview memo.
25 It's the same thing you're asking for here. Why --

1 MS. TRZASKOMA: Well, it's a different
2 universe of interview memo.

3 It's a different universe of interview
4 memos. I mean, look, our dispute with the Attorney
5 General has been going on for more than a year in
6 front of -- in the Trooper 1 action. And, you know,
7 I don't know what to say, except I think -- I don't
8 think -- I think we have an independent lawsuit
9 here. It is related, but it is not the same. And
10 Judge Merkl, you know, she has indicated, as you
11 probably saw in the prior transcript, that she would
12 need additional briefing on the sovereign immunity
13 issue. And that hasn't --

14 THE COURT: Okay. But why should we
15 be briefing it twice?

16 MS. LONGLEY: Your Honor --

17 MS. TRZASKOMA: We haven't briefed it.

18 MS. LONGLEY: This is Serena from the AG's
19 Office.

20 I'd like to just jump in, if I can, to say
21 that the materials and the briefing that are at
22 issue right now and that Judge Merkl ordered a
23 privilege log and in camera review of are the exact
24 same category of materials that Cuomo is seeking in
25 the Bennett case. And those two categories are

1 unredacted transcripts and interview memos.

2 And we have raised the same objections in
3 both cases to those categories of documents. And
4 it, you know, I can't predict 100 percent when Judge
5 Merkl will rule, but based on her asking for in
6 camera review, it appears that she is at least
7 considering ruling on the privilege issue of the
8 interview memos and the unredacted transcript.

9 And it is our position that -- again, not
10 knowing the exact scope of her ruling, that it could
11 have some preclusive effect on Defendant Cuomo in
12 this case, and that it makes sense, given our
13 non-party status, given the state of affairs in the
14 Bennett case and where it is, you know, in
15 discovery, that it's appropriate to wait and see
16 what Judge Merkl does, and see if there is any
17 preclusive effect or narrowing or limiting of the
18 issues before we have to go through the burden as a
19 non-party of litigating the same objections with
20 Defendant Cuomo in the Southern District.

21 THE COURT: Okay. Thank you.

22 Ms. Trzaskoma?

23 MS. TRZASKOMA: May I just be heard briefly
24 on that, Your Honor, because I don't -- because it's
25 not -- I don't think that's entirely accurate.

1 THE COURT: Yes. Go ahead.

2 MS. TRZASKOMA: So --

3 THE COURT: I mean, you don't know whether
4 it's accurate or not. I mean -- go ahead.

5 MS. TRZASKOMA: Yeah.

6 Well, so Ms. Longley is correct that the
7 types of documents we are seeking in both cases,
8 interview memos, unredacted transcripts, that's the
9 same. What's different are the, you know, the, kind
10 of, like, the buckets of those.

11 So in the Trooper 1 action, for example, we
12 narrowed our request to all of the interview memos
13 involving any current or former member of the New
14 York State Police and any interview memo of any of
15 the ten other claimants who are in Trooper 1's
16 complaint.

17 And, arguably, most of that material is not
18 relevant to Ms. Bennett's claim, particularly if
19 she's not planning to rely on Trooper 1.

20 THE COURT: What are you seeking -- which
21 memos are you seeking here?

22 MS. TRZASKOMA: And here, we're seeking
23 memos of executive chamber employees, current and
24 former who were interviewed, since that relates to
25 the environment, the work environment at the

1 Executive Chamber, and any interview memos or
2 unredacted transcripts that mention Ms. Bennett.

3 THE COURT: With that narrowing,
4 Ms. Longley, does it change anything about the
5 Attorney General's position?

6 MS. LONGLEY: No, Your Honor, it doesn't.

7 And I will say that we heard earlier
8 Ms. Trzaskoma talk about that, yes, what she wants
9 to do here is re-litigate the OAG report. And I'll
10 just say this was an OAG investigation into sexual
11 harassment by the governor in the Executive Chamber.
12 And so by saying we're only seeking interview memos
13 of current or former executive chamber employees,
14 that doesn't really narrow things very much at all.
15 It's almost all of the witnesses.

16 So it may look on paper like a narrowing.
17 It's not a meaningful narrowing. And it really goes
18 to, again, what we heard before is that -- and this
19 is exactly what Cuomo argued in Trooper 1
20 unsuccessfully, which is that he wants to
21 re-litigate the OAG report.

22 And if I can go to this concept that was
23 brought up about retaliation, I just want to put on
24 the record that whether or not -- you know,
25 retaliation as a legal matter, does not depend on

1 the validity of the underlying complaint. So it
2 doesn't depend on whether there was sexual
3 harassment or not, it doesn't depend on if the
4 investigation was thorough.

5 You know, Defendant Cuomo wants to pursue
6 those things for his own political rehabilitation.
7 It's not about the actual legal claim for
8 retaliation, which is just did the person engage in
9 protected activity; and then was there, you know, a
10 retaliatory act in response to engaging in the
11 protected activity. You don't need to re-litigate
12 the OAG report in order to deal with the retaliation
13 claim as a matter of law.

14 So I think we're getting far afield, and
15 we're talking also about, you know, the scope and
16 the relevance of certain interview memos here as
17 opposed to Trooper 1, but I don't want to lose sight
18 of the fact that we've also asserted a sovereign
19 immunity defense in both cases; the briefing of that
20 is fully submitted.

21 You know, Judge Merkl may want more
22 briefing. But if she gets to that, I believe it
23 would happen before anything would happen in the
24 Bennett case. Again, I think it makes sense to see
25 how things play out in the Eastern District, where

1 we're litigating the exact same issues, the exact
2 same sovereign immunity defense. Relevance also
3 came up.

4 So everything is really still on the table
5 there. They've sought reconsideration of
6 Judge Merkl's denial of their motion to compel,
7 which she denied on relevance and burden grounds and
8 proportionality, but she hasn't reached the other
9 issues. She may reach them. It seems like she is
10 going to reach at least some of them.

11 And really what Defendant Cuomo is trying
12 to do here is get another do-over. And he even
13 indicated that in the last conference before
14 Judge Merkl, where we brought up the fact that he's
15 now subpoenaing our lawyers who were deputized to
16 carry out a government investigation under Executive
17 Law 63(8). And he has a novel theory that he can --
18 you know, if he can't get the materials from us
19 because of sovereign immunity, he can just subpoena
20 our deputized lawyers to get the materials that way.
21 And --

22 THE COURT: We don't need to get into that
23 today.

24 MS. LONGLEY: Okay.

25 THE COURT: That's not before me.

1 But what if the subpoena were limited to
2 interview memos, the interview memos for Ms.
3 Bennett's interview and any interview memos that
4 reference Ms. Bennett, as well as any documents that
5 the AG received in connection with Ms. Bennett's
6 allegations, whether from her or from somebody else?

7 What if it were limited that way; would the
8 AG still stand on the sovereign immunity objection?

9 MS. LONGLEY: Yes, Your Honor. I think
10 because you're going to any interview memos.

11 And, I'm sorry, I didn't catch the second
12 category. You said plaintiff's interview memo. And
13 then who were the other -- what were the other
14 interview memos?

15 THE COURT: The interview memos that
16 discussed -- just the portions of any interview
17 memos that discussed Ms. Bennett.

18 MS. LONGLEY: Yeah, so we have asserted
19 privilege -- in addition to sovereign immunity,
20 we've asserted privilege over the entirety of the
21 interview memos. Plaintiff doesn't have her own
22 interview memo. Nobody has their interview memo.
23 And there's a reason for that.

24 THE COURT: That's the review that
25 Judge Merkl is doing, though. We're not having two

1 magistrate judges do two privilege reviews. It's
2 bad enough that one of us has to do it. And I feel
3 badly that it's Judge Merkl bearing the brunt of it.
4 So, you know we're not going to -- I don't want to
5 risk conflicting privilege decisions either.

6 MS. LONGLEY: Which is why it makes sense
7 to wait for her to rule on it before, you know, the
8 same thing gets submitted to Your Honor.

9 And I will say that the privilege issues
10 are really important to this office because there's
11 attorney-client privilege in there. There's
12 attorney work product. But the biggest thing is
13 probably law enforcement privilege on those
14 documents. And the documents are full of
15 information about people that's not public,
16 cooperating witnesses.

17 And as we mentioned briefly in our letter,
18 I think it's in footnote 1, which has even been
19 borne out more recently, there has been from the
20 beginning, there were credible fears by cooperating
21 witnesses of retaliation that has been -- there's
22 been a lot in the press. There's a lot in our
23 briefing in Trooper 1.

24 Just last week, the First Department
25 reinstated a retaliation claim brought by a former

1 executive chamber employee who claimed -- alleged
2 that he was fired because he spoke to the OAG
3 investigators and corroborated sexual harassment by
4 Governor Cuomo. And that was just reinstated. And
5 this is why, like, you know, it is very important to
6 our office not to be disclosing to the very person
7 who they're -- who they have credible fears of
8 retaliation exactly what they said. And it's really
9 not germane to Ms. Bennett's lawsuit here. It's not
10 relevant, it's not proportional, and there are real
11 privacy interests, privilege interests, sovereign
12 immunity interests.

13 So I think if you weigh -- if you look at
14 the big picture and all the interests on either
15 side, there really is not a compelling case to --
16 for us to consider providing them voluntarily.

17 THE COURT: Okay. All right.

18 Let's circle back to the timing with
19 respect to Ms. Boylan because it's going to
20 influence the timing with respect to the AG
21 subpoena.

22 Is two weeks enough time for the parties to
23 meet and confer and be prepared to report to me
24 whether they've been able to reach an agreement with
25 respect to the search terms that Ms. Boylan will

1 implement?

2 Ms. Perry, is that achievable by
3 January 18th?

4 MS. PERRY: I'm sorry, Your Honor. I was
5 on mute. By the 18th? Was that for me?

6 THE COURT: Yeah. Well, the question is
7 for you, and it's --

8 MS. PERRY: Yes.

9 THE COURT: -- whether two weeks is enough
10 time for you to meet and confer with Ms. Trzaskoma
11 and Ms. DeRosa's counsel about the search terms that
12 Ms. Boylan would implement using the guidance that I
13 gave earlier?

14 MS. PERRY: Yes, Your Honor. That's more
15 than enough time.

16 THE COURT: And what I would be doing is
17 asking the parties to report to me then as to
18 whether they've been able to reach an agreement or
19 if there's still a dispute. If there's still a
20 dispute, then we'll have another conference. And
21 then, I guess, why don't we in an abundance of
22 caution, I'll give you a date for another conference
23 the week after that.

24 How is -- you're on the west coast, right,
25 Ms. Perry?

1 MS. PERRY: No, Your Honor. I'm in
2 New York.

3 THE COURT: Oh, okay. 10 a.m. on Monday,
4 January 22nd for a conference.

5 MR. MORVILLO: Your Honor?

6 THE COURT: Yes?

7 MR. MORVILLO: This is Greg Morvillo.

8 Mr. Gruppuso and I are in a Rule 104
9 hearing that day in New Jersey on the 22nd, 23rd and
10 24th.

11 THE COURT: Okay. How about 3 o'clock on
12 the 25th?

13 MS. TRZASKOMA: That's good for me.

14 MR. MORVILLO: That works.

15 THE COURT: All right.

16 MS. PERRY: Actually --

17 THE COURT: Who is that a problem for?

18 MS. PERRY: Yeah, I'm going to be out of
19 town for a board meeting.

20 THE COURT: How about the next day at
21 3 o'clock; Friday the 26th.

22 MS. PERRY: I'll still be at the board
23 meeting, but I could step out.

24 THE COURT: Okay. All right.

25 So 3 p.m. on the 26th, then we'll speak.

1 And what else, since we're not meeting until
2 Friday --

3 MS. TRZASKOMA: Your Honor, this is
4 Ms. Trzaskoma. I am not available on the 26th at 3.
5 I could do earlier that day.

6 THE COURT: I'm committed on another case
7 earlier that day. How about the 29th?

8 MS. TRZASKOMA: The afternoon of the 29th
9 works.

10 THE COURT: Okay.

11 Anybody else have a problem with the
12 afternoon of the 29th?

13 MS. PERRY: I do not.

14 THE COURT: Okay. All right. 2 o'clock on
15 the 29th.

16 Ms. Longley, I'll get back to you, but --
17 because I will want to by that time see where things
18 have come out with respect to Judge Merkl. And
19 we'll make a decision at that point whether we will
20 have to do motion practice and, if so, what the
21 scope will be.

22 MS. LONGLEY: Okay, Your Honor. Sorry. So
23 are you asking about my availability on that day?

24 THE COURT: Yes.

25 MS. LONGLEY: Okay. Sorry. Could you --

1 do you remind repeating the day?

2 THE COURT: Yes. It's Monday, January
3 29th, at 2 p.m.

4 MS. LONGLEY: That should work.

5 THE COURT: Okay. Great.

6 All right. So we'll ask the parties to
7 meet and confer between now and then. And by
8 January -- since we're not meeting until the 29th,
9 I'll give you until the 24th to provide me with a
10 joint status letter with respect to the parties
11 meeting and conferring and hopefully reaching an
12 agreement with respect to Ms. Boylan. And then
13 we'll plan to discuss at that point whether any
14 developments in the Trooper 1 case have occurred
15 and, if so, how that will impact the scope of any
16 briefing that we would need here with respect to the
17 subpoena to the Attorney General; okay?

18 MS. TRZASKOMA: Okay. Your Honor, this is
19 Theresa Trzaskoma.

20 Sorry. I appreciate the Court's patience.
21 I just have two issues that I want -- two points I
22 want to make in response to Ms. Longley because --
23 so the record is clear.

24 THE COURT: Okay.

25 MS. TRZASKOMA: First of all, we do have

1 Ms. Bennett's interview memo, which Governor Cuomo
2 received in the context of discovery in a criminal
3 investigation, in a criminal case that was
4 dismissed.

5 THE COURT: Okay.

6 MS. TRZASKOMA: It's redacted, as I
7 understand all of the interview memos are, for
8 information that arguably is -- contains some sort
9 of attorney impressions.

10 And the second -- so I just want to raise
11 that because I think it's not the case that, you
12 know, those interview memos have been kept in a
13 lockbox because they're privileged.

14 And the second issue is that the privilege
15 review that Judge Merkl is doing, there is -- I
16 think there is actually very little overlap between
17 what Judge Merkl is reviewing right now and what
18 Your Honor would be reviewing. I mean, the
19 privilege log, which I'm -- which the Attorney
20 General's Office produced, the vast majority of the
21 interview memos are from troopers or former troopers
22 and other complainants, so --

23 THE COURT: Right, but she's reviewing for
24 the same privileges, though. So that's the point --
25 that's my point about not having to do -- make two

1 magistrate judges do two privilege reviews.

2 I understand there may be different
3 documents, but she's reviewing for the same
4 assertions of privilege, of attorney-client work
5 product and law enforcement. So it's the same.
6 It's the same nature that she's considering. I
7 realize it may be a different memo, you know, a
8 different name on the memo, but it's the same
9 privileges.

10 MS. TRZASKOMA: Well, I guess this goes --
11 yeah, I mean, it may be that there's some
12 combination of privilege and relevance. I don't
13 know what her review is encompassing, but I just --
14 I wanted to make clear that there -- that it's a
15 different universe of materials in this case, and
16 also that the interview -- many -- not many -- a
17 handful of interview memos including Ms. Bennett's,
18 have been disclosed, and we have them, so ...

19 THE COURT: See, that will go to weight.
20 That will go to -- if there is a privilege, whether
21 there's a waiver, which would be addressed in the
22 context of any briefing if we have to do that, so --

23 MS. TRZASKOMA: Okay. Thank you,
24 Your Honor.

25 THE COURT: Yes.

1 MS. LONGLEY: Your Honor?

2 THE COURT: Yes?

3 MS. LONGLEY: It's Serena Longley from the
4 AG's office. Can I just, you know, comment on the
5 interview memos that Cuomo has?

6 He got them through criminal discovery. He
7 did not get them from us. And I look forward to --
8 you know, we can certainly brief the Court if this
9 gets to Your Honor about why the privilege has not
10 been waived on that, but it hasn't, and, you know,
11 he got those in the context of criminal discovery in
12 New York State Criminal Court, which is very
13 different standard than is in place here in the
14 civil court.

15 THE COURT: I understand. I'm not making
16 any ruling, and nobody should construe anything that
17 I've said here today, things that are not before me
18 and issues that have not been briefed, we're not
19 making a finding on those. So that's the reason for
20 deferring this and having, hopefully, a clearer
21 discussion about that.

22 Again, I'm just really trying to minimize
23 the number of issues that have to be briefed because
24 at a -- it does seem -- from what I understand, and
25 I've read most, if not all, of what's been presented

1 to Judge Merkl, obviously, not the documents
2 themselves, but I've read the transcripts of all of
3 her discussions with all of you, and a lot of the
4 issues are overlapping, and it's burdensome for the
5 parties, and it's burdensome for two courts to have
6 to resolve the same issue in multiple places,
7 multiple times. So that's why I'm trying to
8 streamline this, so that if we do have briefing,
9 it's going to be on a quick turnaround.

10 I mean, the other issue that we haven't
11 talked about, but we'll have to talk about on the
12 29th, is that the fact discovery cutoff is the end
13 of February. Clearly, we're not going to make that.
14 So we're going to have to assess -- the parties
15 should be prepared to discuss at that conference,
16 you know, what's still remaining and, you know,
17 what, if any, additional time is going to be needed.
18 So we don't have to get to that today, but, you
19 know, it's out there. All right.

20 Ms. Schnell, for Ms. Bennett, anything else
21 you would like to raise today while we're assembled?

22 MS. SCHNELL: No, Your Honor, other than we
23 have been unsuccessful in seeking deposition dates
24 from the defendants. And if that has not been
25 resolved by the 29th, we would like to address that

1 at that conference, Your Honor.

2 THE COURT: Well, what we'll do is we'll
3 let anybody who has something to say, you need to
4 get a letter to me by January 24th at 5 p.m. And
5 that's your deadline. I'm not taking -- nobody is
6 going to be able to raise any issues or pop up or
7 throw something else at me after 5 o'clock on
8 January 24th, so ...

9 MS. SCHNELL: Absolutely, Your Honor.

10 That's --

11 THE COURT: If you want to have it be
12 heard -- if you want me consider it at the January
13 29th conference, that's the deadline.

14 MS. SCHNELL: We will absolutely abide by
15 that, Your Honor. Not a problem.

16 THE COURT: Okay. Thank you.

17 Ms. Trzaskoma, anything else you would like
18 to cover today?

19 MS. TRZASKOMA: No, Your Honor. Thank you.

20 THE COURT: All right. Thank you.

21 Ms. Sulkowski?

22 MS. SULKOWSKI: Nothing, Your Honor. Thank
23 you.

24 THE COURT: And Ms. Longley?

25 MS. LONGLEY: Yes. One thing, Your Honor.

1 In the event there are any developments in
2 the Trooper 1 case, as it relates to the subpoena to
3 the Attorney General's Office, would you like us to
4 provide a, you know, update by letter to the Court
5 whenever that happens?

6 THE COURT: Yes, I do. It doesn't have to
7 be immediate, but you can --

8 MS. LONGLEY: Yeah.

9 THE COURT: -- do it in your January 24th
10 letter.

11 MS. LONGLEY: Okay. And in the unlikely
12 event there's a ruling between the 24th and the
13 29th, I would think Your Honor would want us to
14 write anyways to let you know.

15 THE COURT: You can certainly let me know
16 before then. Just not after then.

17 MS. LONGLEY: Okay. Thanks.

18 THE COURT: All right. Either of the other
19 defendants, Ms. DesRosiers or Ms. Mogul, anything
20 else you want to raise?

21 It's nothing or either that they're on
22 mute. Okay.

23 MR. DELIKAT: No, Your Honor, for Defendant
24 Mogul.

25 THE COURT: Okay. Thank you.

1 And for Ms. DesRosiers?

2 MR. SCHWAB: Nothing to add, Your Honor.

3 THE COURT: Okay. All right.

4 Thank you very much, everyone. You'll see
5 a post-conference order from us. And we'll be
6 adjourned.

7 Thank you. Have a good afternoon.

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C E R T I F I C A T E

4 I, Adrienne M. Mignano, certify that the
5 foregoing transcript of proceedings in the case of
6 Bennett v. Cuomo, et al; Docket #22CV7846 was
7 prepared using digital transcription software and is
8 a true and accurate record of the proceedings.

ADRIENNE M. MIGNANO, RPR

14 Date: January 6, 2024